***THE HON'BLE SRI JUSTICE P.S. NARAYANA**

+W.P.No.25167/2005 and W.P.No.7619/2006

% 30-11-2007

W.P.No.25167/2005

B. Satish Kumar Gupta .. Petitioner

And

$ Government of Andhra Pradesh,
Rep. by its Secretary,
Industries & Commerce (IF.CELL) Department,
Secretariat, Hyderabad and 2 others .. Respondents

W.P.No.7619/2006

B. Satish Kumar Gupta .. Petitioner

And

$ Government of Andhra Pradesh,
Rep. by its Secretary,
Industries & Commerce Department,
Secretariat, Hyderabad and 4 others .. Respondents

<GIST:

>HEAD NOTE:

! Counsel for the petitioner : Sri Hariharan

^ Counsel for the respondents: A.G.P. for Industries,
Sri Pratap Reddy, Sri K.V.Simhadri and Sri Rama Rao Ghanta

?CASES REFERRED :

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.M.P. No.18764/2007 and

Writ Petitions No.25167/2005 and 7619/2006

Date: 30th November, 2007

Between:-

W.P.No.25167/2005

B. Satish Kumar Gupta .. Petitioner

And

Government of Andhra Pradesh,
Rep. by its Secretary,
Industries & Commerce (IF.CELL) Department,
Secretariat, Hyderabad and 2 others .. Respondents

W.P.No.7619/2006

B. Satish Kumar Gupta .. Petitioner

And

Government of Andhra Pradesh,
Rep. by its Secretary,
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Secretariat, Hyderabad and 4 others .. Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.M.P. No.18764/2007 and

Writ Petitions No.25167/2005 and 7619/2006

COMMON ORDER:-

These two Writ Petitions are being disposed of by a common order in view of the commonality of the parties and also the subject matter as well.

2. Sri Hariharan, the learned Counsel representing the writ petitioner in both these Writ Petitions, had taken this Court through the respective pleadings of the parties and also the material available on record and specifically pointed out under what circumstances, the Writ Petition had been withdrawn and the proceedings Lr.No.10/DSK.25/DAA/93, dt. 16-11-1993, had been strongly relied upon. The Counsel also explained the cancellation of the lease by G.O.Ms.No.225 and the Government obtaining possession and further relied upon Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 and the suitable amendments thereto. The learned Counsel also explained the interim order of *status quo* and how an allotment of small portion had been made for construction of M.R.O.'s Office and the learned Counsel also explained the petitioner filing Writ Petition W.P.No.4561/2002 whereunder this Court directed the Government to consider fresh application of the petitioner for lease in accordance with the provisions of the Act aforesaid. The learned Counsel also explained the notification dt.17-2-2004 issued under the Act aforesaid calling for applications for fresh leases from occupant industrialists in the light of the termination of the leases by operation of law under the Act. The Counsel also explained that the writ petitioner filed an application on 17-3-2004 and the Government rejected the application on the ground that the writ petitioner was not running any industry on the relevant date in the year 1992 and also on 17-2-2004. The appeal against such order was rejected on 18-11-2004. In W.P.No.21410/2004 this Court directed the Government for fresh disposal of the application of the writ petitioner. The learned Counsel also explained the order made in W.P.No.1812/2006 and under what circumstances the first Writ

Petition was filed and subsequent thereto, the second Writ Petition also was filed. The Counsel also explained the inconsistent stands taken by the Government, the ground that there was no industrial activity from 1967 onwards is an unsustainable ground since even as per the stand taken by the Government, this cannot be a correct stand. The industrial activity had been there from 1967 to 1988 onwards. The learned Counsel also made elaborate submissions that in the light of the facts and circumstances, both the doctrine of promissory estoppel, doctrine of legitimate expectation would come into play. Having promised to consider the application of the petitioner, despite the order of *status quo*, an allotment had been made and the same is bad in law. There is absolutely no objectivity in considering the application. The learned Counsel while further elaborating his submissions, would maintain that it is a case where entire industrial estate had been cancelled and certain litigations were fought even from the year 1990 onwards, the *lis* is pending. R.3 was inducted into possession during the pendency of the Writ Petition due to certain political reasons. Second Writ Petition is only a consequential Writ Petition. The learned Counsel also pointed out to the relevant paras of the counter affidavit and would maintain that the Government is bound to keep up the promise especially when the withdrawal was made at the instance of the Government. Hence, in the facts and circumstances, the Writ Petitions are to be allowed. The learned Counsel also placed strong reliance on certain decisions to substantiate his submissions.

3. The learned A.G.P. for Industries had taken this Court through the contents of the counter affidavit and would submit that the Unit was run till November, 1975. The learned A.G.P. for Industries also

explained the scope and ambit of the Act and the Amendment Act as well and would maintain that the lease was cancelled and an allotment was made. The learned Counsel also had taken this Court through G.O.Ms.No.225, dt.23-03-1990 and also would maintain that the sub-letting of the premises is also impermissible. The learned A.G.P. for Industries explained the violations or the contraventions in this regard.

4. Sri Pratap Reddy, the learned senior Counsel representing R.3 would maintain that the Government had taken possession on 11-5-1990 and the Act was not implemented up **to 17-2-2000. The** learned senior Counsel also would maintain that W.P.No.7025/1990 had been withdrawn without reserving any liberty whatsoever and the alleged promise of the Government had not been incorporated and in the light of the same, the said withdrawal in a way would operate as *res judicata* and any contra contentions cannot be sustained in the light of the Order XXIII Rule 3 of the Code of Civil Procedure. The learned senior Counsel also had drawn the attention of this Court under Sections 3 and 4 of the Act and explained the scope and ambit of the words *'the person in occupation'* in Section 4 of the Act and would maintain that in the light of the fact that on the relevant dates, the petitioner was not in possession, an application in accordance with provisions of the Act cannot be maintained. The learned senior Counsel also pointed out that the 3rd respondent in fact purchased the property at the market price. It is not as though the whole area had been given to the 3rd respondent apart from to the M.R.O.s Office and still much extent of the land is available and may be if the Government is inclined to consider the case of the petitioner, the same may be considered in

accordance with law relating to the rest of the extent.

5. Sri K.V.Simhadri and Sri Rama Rao Ghanta also substantially made similar submissions.

6. Heard the Counsel. Perused the respective pleadings of the parties and also the material placed before this Court.

7. W.P.No.25167/2005 is filed for a Writ of Mandamus or any other appropriate writ declaring the action of the 1st respondent contained in Memo. No.14701/IF.Cell/Ex.A.1/2005 dt.29-10-2005 and the order of the 2nd respondent contained in Lr.No.13/1/2004/0025/FD dt.8-7-2004 rejecting the claim of the petitioner for grant of leasehold/free hold rights over industrial Plot bearing No.21/1 of Azamabad Industrial Area, Hyderabad is arbitrary and illegal and also declare that the cancellation of leasehold rights of the petitioner contained in the order of the 1st respondent in G.O.Ms.No.225, dt.23-3-90 is arbitrary and illegal and consequently direct the respondents to reconsider the claim of the petitioner for grant of freehold/leasehold rights over the said industrial plot by deeming that the petitioner has been in continuing lessee as on the date when the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 and the provisions of the amendments to the said Act by declaring that the allotment of the said industrial plot in favour of the 3rd respondent is arbitrary and irrational and grant such other relief as it deems fit in the circumstances of the case.

8. Counter affidavit of R.1 and R.2 had been filed. Counter affidavit of R.3 also had been filed in this Writ Petition.

9. W.P.No.7619/2006 is filed by the writ petitioner praying for the relief of Writ of Mandamus or any other appropriate Writ

declaring that the action of the respondents in selling plot No.21/1 of Azamabad Industrial Area, Hyderabad to the 3rd respondent under registered sale deed bearing Document No.3804/2005 dated 23-11-2005 ignoring the legitimate claim of the petitioner for grant of fresh lease of the industrial plot, is arbitrary, illegal and malafide and consequentially direct the 3rd respondent to forbear from utilizing/consummating the said plot for any purpose and also direct respondents 1, 2 and 4 to grant leasehold/freehold rights of the said plot in favour of the petitioner contemplated by the provisions of the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 and pass such other suitable orders.

10. Counter affidavits were filed by R.1 and R.2 and also the 3rd respondent and several documents were also filed along with W.P.M.P.No.18764/2007.

11. The application to receive documents – W.P.M.P. No.18764/2007 is hereby allowed.

12. The respondents 1 to 3 in W.P.No.25167/2005 are shown as respondents 1 to 3 in W.P.No.7619/2006 also and apart from these parties, in W.P.No.7619/2006 A.P. Industrial Infrastructure Corporation Ltd., rep.by its Managing Director, is shown as R.4 and the Municipal Corporation of Hyderabad, rep. by its Commissioner, was shown as R.5. Since the respective pleadings of the parties in both the Writ Petitions being virtually the same, it may be appropriate to have adopt the respective pleadings of the parties in the latter Writ Petition W.P.No.7619/2006 in view of the commonality of facts and law involved in both the Writ Petitions.

13. It is averred that *the father of the petitioner late S.Bhagatram Gupta was the Managing Partner of M/s.S.B.Ram and Company,*

which was an industrial concern manufacturing Ready Made Garments and his father was leased out an industrial plot bearing plot No.21/1 admeasuring 1.137 acres in Azamabad Industrial Area, Hyderabad, for a period of 99 years vide registered Lease Deed executed by the Government of Andhra Pradesh on 24-3-1967 enabling establishment of the manufacturing plan for Readymade Garments and the business name of the said manufacturing unit was Ram Dresses. Further it is averred that the father of the petitioner, in pursuance of the said lease deed, had constructed the factory building, installed the plant and machinery for the manufacturing unit of Readymade Garments and the said unit was continuously functional, carrying on the manufacturing activity for over 15 years and thereafter, due to labour unrest, it became a sick unit. Further it is stated that at that stage, the father of the petitioner contemplated about a change in the line of industry from Dress Manufacturing Unit to Pharmaceuticals and in that context, he had entered into a Partnership with certain others under a Partnership Deed dated 14-7-1976 under the name and style of M/s.Phoenix Pharmaceuticals. The petitioner also stated that his father had obtained necessary permission for change over from the manufacturing of Garments line to manufacture of Phamaceuticals, as per the Memorandum dated 29-12-1976 issued by the 1st respondent and in the said letter, it is clearly mentioned that the leasehold rights of the plot will remain with his father and his successors only but the permission has enabled change over the manufacturing line from Garments to Pharmaceuticals. The petitioner further stated that subsequently his father had applied for permission for sub-lease of the said industrial plot and permission

was granted by the 1st respondent vide Memo dated 4-12-1973 for sub-lease of a portion of the plot in favour of M/s.Beetee Pharmaceuticals Pvt. Ltd., and thus it is clear that his father had not only taken permission for change over of the manufacturing line but also permission for sub-lease of the industrial plot. Further it is stated that due to some disputes amongst the partners of M/s.Phoenix Pharmaceuticals, which resulted in a civil suit being filed in the Court of the IV Additional Judge, City Civil Court, Hyderabad in O.S.No.398/95 but the said firm was carrying on the manufacturing activity upto 10-7-1998, the date on which, outside partners have left the Partnership Firm and that eversince grant of lease, there was always an industrial activity over the industrial plot and that in other words, industrial plot was never put to disuse by the father of the petitioner or the Partnership firm of which the father of the petitioner was a partner. It is also stated by the petitioner that his father died in the year 1995 and thereafter, he was actively associated with the manufacturing process in the said industrial plot and at that stage, the 1st respondent had issued memo dated 29-7-1987 proposing termination of lease on the ground of sub-lease and non-user of the industrial plot and that he had filed a detailed explanation to the said show cause notice and the proceedings were dropped by the 2nd respondent as per letter dated 8-4-1988 and he was called upon to furnish the names of the legal representatives of late S.Bhagatram Gupta, which was duly complied with, as per letter dated 28-4-1988. While matters stood thus, the petitioner had received another show cause notice from the 1st respondent dated 12-7-1989 suggesting termination of lease on the very same grounds, which were subject matter of the show

cause notice dated 29-7-87 and that therefore, the petitioner had submitted detailed representation to the said show cause notice reiterating that the very circumstance that the proceedings pursuant to the show cause notice dated 29-7-1987 were dropped, there is absolutely no fresh cause of action for suggesting termination of the leasehold rights over the industrial plot and without any consideration to his explanation, the 1st respondent had issued G.O.Ms.No.225, dt.23-3-1990 terminating his leasehold rights in respect of the said industrial plot. It is also stated by the petitioner that challenging the said order in G.O.Ms.No.225 dated 23-3-90, he had filed W.P.No.7025/90 in this Hon'ble Court and an interim order of status quo as regards possession was granted by this Hon'ble Court on 25-5-1990 in the said Writ Petition. Further it is averred that while the above said Writ Petition was pending, the petitioner had submitted a detailed representation dated 21-7-93 to the 1st respondent for restoration of the lease, which was executed in favour of his father, since the lease was heritable. It is also stated by the petitioner that in other words, his representation dated 21-7-1993 was in substance seeking review of the termination order contained in G.O.Ms.No.225 dated 23-3-1990 since at that time, he was given to understand that the Government itself may reconsider the issue and restore the leasehold rights in his favour and that on the said representation, the 1st respondent had issued memo dated 20-8-93 forwarding his representation to the 2nd respondent and directing the 2nd respondent to obtain a fresh lease application. The petitioner also further averred that at that time, he had received a letter from the 2nd respondent dated 16-11-1993 wherein he was required to withdraw his Writ Petition in W.P.No.7025/1990 so that

the Government can take appropriate decision. It is also stated that considering that the cancellation of lease was subject matter of review-reconsideration by the 1st respondent, he had withdrawn the said Writ Petition taking inspiration from the letter of the 2nd respondent dated 16-11-1993 and that heavily relied on the 1st respondent for review-reconsideration of the termination order dated 23-3-1990 relating to the leasehold rights over the industrial plot, since the 2nd respondent had required him to furnish the following details for reconsidering his case for restoration of leasehold rights:-

a) Memorandum and Articles of Association of the proposed Private Limited Company.

b) Copy of the order dated 30-1-1993 in W.P.No.7025/1990 dismissing the Writ Petition as withdrawn.

c) Acceptance of other legal heirs (Smt. Mani Bai and B.Vijay Kumar Gupta). Both the legal heirs are mother and brother of the petitioner, the two legal heirs in the family have filed an affidavit on 8-12-1993 that they have no objection if fresh lease is granted in favour of B.Satish Kumar Gupta – Writ Petitioner.

d) Application filed under the Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992 in Form A (Rule 4(1) on 23-12-1993 for grant of lease.

e) Payment of quit rent for the period from 1-1-1990 to 23-3-1990 amounting to Rs. 71,626/- payable at SBH, Gunfoundry on 22-12-1993.

The said G.O.Ms.No.225 issued by the Government dt.23-3-1990 reads as hereunder:-

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Industrial Area, Azamabad, Hyderabad – Plot No.21/1, admeasuring 1.137 acres, leased out to Sri S.Bhagat Ram Gupta, S/o.Sri Sedmulji – Breach of covenants and violation of terms and conditions of lease in

respect of leasehold premises – Termination of lease – Orders – Issued.

INDUSTRIAL & COMMON (IF – CELL) DEPARTMENT

G.O.Ms.No.225 DATED:23-3-1990

Read the following:-

1. From Sri S.Bhagat Ram Gupta, Representation, dated 5-11-84.
2. From Sri S.Bhagat Ram Gupta, Representation, dt.8-4-85.
3. From the Commissioner of Industries, Hyderabad, Letter No.4832/IAA/84, dated 22-6-85.
4. From the Commissioner of Industries, Hyderabad, letter No.26/IA/60, dt.29-4-1986, addressed to Sri S.Bhagat Ram Gupta.
5. From the Commissioner of Industries, Hyderabad, letter No.4832/IAA/84, dated 12-2-1987.
6. From the Commissioner of Industries, Hyderabad letter No.4882/IAA/84, dt.11-6-87.
7. Government memo. No.638/IF.CELL/84-19, dated 29-7-87.
8. From the Commissioner of Industries, Hyderabad, letter No.4882/IAA/84, dt.11-12-1987.
9. From Sri Koka Raghava Rao, Advocate, dated 12-7-1988.
10. From the Additional Commissioner of Industries, Hyderabad, letter No.4882/IAA/88, dated 8-8-1988.
11. From the Additional Commissioner of Industries, Hyderabad, letter No.4882/IAA/84, dated 12-9-1988.
12. Government memo. No.638/IF.CELL/84-38, dated 12-7-89.
13. From Sri B.Satish Kumar Gupta and Sri B.Vijay Kumar Gupta, Reply, dated 13-8-1989.
14. From the Additional Director of Industries, Hyderabad letter No.4882/IAA/84, dated 4-7-90.

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O R D E R:-

The plot of land bearing No.21/1, admeasuring 1.137 acres, situated in the Industrial Area, Azamabad, Hyderabad, was leased out to Sri S.Bagat Ram Gupta, S/o.Sri Sedmulji, for a period of 99 years on a yearly quit rent of Rs.24.37 under the Lease Deed executed on 24-3-1967, for the purposes of running and erecting thereon a Factory for the manufacture of “Ready Made Dresses”. The said lessee Sri Bhagat Ram Gupta, occupied the plot of land in January, 1960.

2. The said lessee, Sri Bhagat Ram Gupta, is said to have been expired on 3-5-1985, as reported by his two sons Sarvasri B.Satish Kumar Gupta and B.Vijay Kumar Gupta, through their Advocate SriKoka Raghava Rao, under reply-notice dated 12-7-1988. It is also reported in the successors-in-interest and steps into the shoes of the said lessee, Late Sri Bhagat Ram Gupta, in respect of the leasehold rights of the

said deceased lessee.

3. As requested by Late Sri Bhagat Ram Gupta during his life-time in his letter dated 12-7-1967, permission for starting Paramount Cattle Feed & Mineral Grinding on partnership basis was accorded by the Government in 1967, but no such unit was set up by him nor did her revive his original dress making industry. The said lessee during his life-time came up with another proposal on 24-2-1976 stating that he could not revive the dress-making industry due to labour trouble and requested for permission to sub-lease it to run a unit on partnership basis in a portion of Plot No.21/1, which was permitted by the Government. The partnership entered into by the said lessee on 14-7-1976 revealed that it was for a period of two years under which the lessee provided infrastructure facilities to other partners in return of a fixed amount every year towards good-will and profit irrespective of the industry ran in profit or loss. The Government further allowed one year to the said lessee, late Sri Bhagat Ram Gupta, basing on his representation dated 22-10-1983 in the Government Memo No.1080/IF-CELL/82-1, dated 8-11-83 and directed him to take all effective steps for the revival of his dress making industry or start a new industry in the leased premises and to put the entire plot to industrial use. The one-year time allowed was also expired by November, 1984. But the said lessee kept the land under his occupation in the above premises idle without starting his own industry or setting up a new unit.

4. The Commissioner of Industries in the reference second read above, brought to the notice of the Government that the said lessee kept the dress-making unit closed and also kept an area of 2500 sq.yds., unutilized and also that the said lessee neither revived the dress-making unit nor set up any other industry during the one year time allowed.

5. Even though the said lessee, Late Sri Bhagat Ram Gupta, occupied the Plotno.21/1 and executed the lease deed on 24-3-1967, he has of the promoted and established any industry or revived his own dress-making unit, except representing for extension of time for the revival of original unit and for starting a textile processing unit. In the reference fourth read above, the attention of the said lessee was also drawn by the Commissioner of Industries to the Government instructions in Memo No.1080/IF-CELL/82-1, dated 8-11-1983 allowing one year time to take effective steps to revive his dress-making unit or to start a new unit and to put to use the leased premises for industrial

purpose. Instead of reviving the unit within the stipulated time, the said lessee came up with another plea that the portion occupied by M/s.Phoenix Pharmaceuticals was required by him to start the industry and contended that the said unit was got to be vacated from the portion of the plot to take up his industrial activity.

6. As reported in the letter tenth read above, during the inspection of the said Plot No.21/1 on 30-7-1988 by the Assistant Director and Supervisor, District Industries Centre, Hyderabad, it was noticed that the Factory shed portion, which was occupied by M/s.Phoenix Pharmaceuticals was found vacant without any plant and machinery and that M/s.Phoenix Pharmaceuticals vacated the said premises to comply a Court decree. It was also noticed by the above officials that there was no machinery and equipment belonging to the said lessee at the premises and there was no industrial activity in the said premises.

7. It was also brought to the notice of the Government by the Additional Commissioner of Industries in the reference 11th read above that during the inspection of the entire area covering Plot No.21/1 by the Assistant Director and Supervisor, District Industries Centre, Hyderabad, on 9-9-1988 and 12-9-1988, it was found that no industry was started by the said lessee/legal heirs in the said premises and also in the portion vacated by M/s.Pheonix Pharmaceuticals which was taken over by the legal heirs of the deceased lessee, Late Sri Bhagat Ram Gupta. It was also found that machinery was not installed and that no industry was run in the leased premises of Plot No.21/1 by the legal heirs of the said deceased lessee and that the said premises was kept idle without any industrial activities.

8. A revised show cause notice was issued in reference 12th read above to the successors-in-interest of the leasehold rights of the said deceased lessee, Late Sri Bhagat Ram Gupta, calling for a reply, as to why the leasehold rights in Plot No.21/1, measuring 1.137 acres in Industrial Area, Azamabad should not be determined for their failure to utilize the leased land for the original line of manufacture, viz., “Ready Made Dresses” and for not reviving the said unit inspite of extensions of time which has resulted in willful breach of covenants and contravention of terms and conditions of the lease agreed upon in respect of the said leasehold premises i.e., Plot No.21/1.

9. In reply to the above show cause notice, Sarvasri B.Satish Kumar Gupta and B.Vijay Kumar Gupta, two sons of the successors-in-

interest of the said leasehold rights of the deceased lessee, Late Sri Bhagat Ram Gupta, have replied in the reference 13th read above and admitted that the shed portion was without plant and machinery, as it was being put to a different use and that they have not started the manufacture, as it required prior permission, which would be obtained in due course. They have also admitted that they have taken possession of the said premises from M/s.Phoenix Pharmaceuticals and are arranging to finalize their manufacturing programme, which would take a few months. They have denied having committed willful breach of covenants and contravened the terms and conditions of lease.

10. The Additional Director of Industries in his letter at reference 14th read above, has reported to the Government that the concerned Assistant Director and Supervisor inspected the entire area of 1.137 acres in plot No.21/1 and found nothing belonging to the unit was available at the premises except a Watchman on 24-11-1989 and 25-11-1989. Besides there was no industrial and production activity of any industry at the premises and the buildings were locked. He has also reported that there was no machinery connected with any industry including production activity at the said leasehold premises i.e., plot No.21/1.

11. For the foregoing, it is clearly established that

a) during the lifetime of the said lessee, Sri Bhagat Ram Gupta, permission was given by the Government in 1967 to start a Paramount Cattle Feed & Mineral Grinding Unit as requested on 12-7-1967, but he has not set up nor did not open revive the original dress-making industry;

b) the said lessee, during his lifetime again requested for permission to run M/s.Phoenix Pharmaceuticals as per partnership deed, dated 14-7-1976, which was restricted for two years, and earned recurring monthly income of Rs.3,000/- from the said company in the guise of partnership agreement. The said partnership was dissolved and prior approval for revised partnership dated 11-1-1980 was not obtained from Government by the said lessee;

c) though one year time allowed to him by the Government on 8-11-1983 for the revival of his dress-making unit or for starting a new industry as requested by the said lessee in his representation, dated 22-10-1983 was expired by November,

1984, the land under their occupation in the said premises was kept idle without starting their own unit or setting up a new industry;

d) the proposal of installing textile processing unit in the premises, as stated by the said lessee in letters 8/84 and 11/84 is not true, as no such proposal was received by the Government.

e) the contention that the lease was not dress-making industry and the land could be used for other purposes cannot be accepted, as it is specifically provided in the lease terms that the said land was leased out to set up and run the Dressmaking Unit and it would be treated as due performance of the covenant of the lease deed if the said lessee or his successors-in-interest continued to run the industry during the lease period, but they did not revive/start it inspite of giving ample time;

f) although the land occupied by M/s.Pheonix Pharmaceuticals was taken over by the legal heirs of the said deceased lessee, the machinery was not installed and no industry was run in the leased premises as on September, 1988.

g) the statement in Advocate's reply, dt.12-7-1988 that the successors-in-interest of the said deceased lessee have commenced the manufacturing process of ready made dresses in the same old name of "Ram Dresses" is not true, as the successors-in-interest of the leasehold right of the said deceased lessee, Sarvasri B.Satish Kumar Gupta and B.Vijay Kumar Gupta have admitted in their reply dated 13-8-1989 that the shed portion which was without plant and machinery, was being put to different use and that they have not started the manufacturing programme;

h) as on November, 1989, there was no industries and production activity of any industry at the said premises, as there was no machinery installed for this purpose and the buildings were locked, as reported in the letter 14th read above.

12. Thus, during the lifetime of the said lessee, Late S.Bhagat Ram Gupta and his successors-in-interest of the said lesehold rights of the deceased lessee failed to run the unit of original line of manufacture "Ready-Made Dresses" or revive it or start a new unit so far in the

leasehold premises of Plot No.21/1, inspite of several reminders and ample opportunity given to them all these years. The entire land in Plot No.21/1 was kept idle without any industrial activity, defeating the very purpose of individual use for which the land was leased-out.

13. As per the lease deed executed by the said lessee during his lifetime, the condition relating to breach of any of the covenants is as follows:-

> "If and whenever there shall be a breach of any of the covenants by lessee, the lessor may re-enter upon the said premises or any part thereof and immediately thereupon this demise and all rights of the said lessee hereunder shall absolutely determine".

14. The Lease Deed further provides that:

> "The lessee will start the industry for which the premises have been leased within six months from the execution of lease deed and that any default on the part of the lessee in this respect will entitle the Lessor to determine the lease and re-enter upon the land and take possession of the buildings constructed by the lessee."

15. Hence, all the activities aforesaid done and committed by the said lessee, Late S.Bhagat Ram Gupta, during his lifetime and by the successors-in-interest of the said leasehold rights of the deceased lessee, are in clear breach of the covenants and are in contravention of the terms and conditions of the lease deed executed on 24-3-1967. Therefore, they have no right to possess the leased land on the basis of the length of the lease period, as they failed to adhere to the terms and conditions of the lease.

16. In view of the foregoing and in view of the willful breach of covenants and violation of terms and conditions of the lease agreed upon in respect of the leasehold premises of Plot No.21/1, measuring 1,137 acres, the very purpose of grant of lease on favourable terms had been defeated, since during the lifetimer of the said lessee, S.Bhagat Ram Gupta and his successors-in-interest of the leasehold rights of the said deceased lessee have failed to run the original line of manufacture i.e., "Ready Made Dresses Unit" and carry on the industrial activity in the said leased premises.

17. In view of the aforesaid reasons, the Governor of the Andhra Pradesh hereby terminates the leasehold rights in Plot No.21/1, admeasuring 1,137 acres in Industrial Area, Azamabad, Hyderabad.

18. The Commissioner of Industries, Hyderabad is requested to take

necessary action and resume possession of the said premises immediately.

T.R.Prasad
PRINCIPAL SECRETARY TO GOVERNMENT.

To
Sri B.Satish Kumar Gupta
Sri B.Vijay Kumar Gupta
Smt. Mani Bai
The Commissioner of Industries,
The Additional Director of Industries
The General Manager, District Industries Centre.

Copy to Law (J) Department.

It is also stated that the substance of the letter to be taken as a promise and hence, the petitioner had withdrawn the Writ Petition W.P.No.7025/90 and paid the quit rent as demanded and also complied with all terms and conditions incorporated in the letter of the 2nd respondent dt.16-11-1993. It may be appropriate to have a glance at the contents of the letter dt.16-11-1993 and the contents are as hereunder:-

GOVERNMENT OF ANDHRA PRADESH

From: To
The Commissioner of Industries Sri B.Satish Kumar Gupta,
Andhra Pradesh, 1-2-367/1, Gagan Mahal Road,
Hyderabad Domalaguda, Hyderabad.

Lr.No.10/DSK-25/D.A.A./93, dated 16-11-1993

Sir,

Sub:- Azamabad Industrial Area – Representation for allotment of Plot No.21/1 – Information called for – Reg.
Ref:- 1) Your Representation dt.12-10-1993
2) Lr.No.NIL dated 25-10-1993.
3) Govt. Memo. No.638, Inds & Compromise. (IF.Cell) Dept/84, dated 20-8-1993.

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I invite the attention to the references cited after examining your proposal, the following particulars are necessary for taking appropriate decision.

a) Memorandum, Articles of Association of Your Private Limited Company.

b) Sri B.Satish Kumar Gupta has only given undertaking to withdraw court case. As such the acceptance of other two legal heirs i.e., 1) Smt.Mani Bai and (2) Sri Vijay Kumar Gupta is also required.

c) Court orders for the withdrawal of the case by the petitioners is required.

d) Under Azamabad Industrial Are (Termination & Regulation of leases) Act, 1992 the applicant should furnish application in Form-A (Rule 4(1)).

e) Applicant should produce evidence of the payment of arrears of rent from 1996-97.

Applicant is also requested to give undertaking to pay the arrears of the enhanced rate or quit rent. The rate of quit rent is enhanced at 0.25 paise for Sq.Yards per month with effect from 1-1-1985 till the date of lease termination order dt.23-3-1990.

The above particulars may be furnished at an early date.

Yours faithfully,

Sd/-

For Commissioner of Industries & Competent Authority.

It is also stated before the 2nd respondent that the industry would be commenced within a period of one year from the date of re-delivery of possession of the plot. It is also stated by the petitioner that since he had complied with all the requirements contained in the letter of the 2nd respondent dated 16-1-1993 and also withdraw the Writ Petition and paid the quit rent, he had legitimate expectation that the industrial plot would be restored to him as regards leasehold rights and also stated that in the year 1992, the State Legislature has enacted Azamabad Industrial Area (Termination and Regulation of Leases) Act, 1992, (hereinafter in short called as 'the Act') by which all the subsisting leases in the Azamabad Industrial Estate were enmass terminated by operation of law and the vires of the said Act was unsuccessfully challenged before this Court and, therefore, the matter was taken to the Supreme Court of India and at that stage,

the 1st respondent had represented before the Apex Court that it is going to come up with certain amendments carrying considerable benefits to the erstwhile lessees and on that promise, the appeals in the Supreme Court were closed. It is also stated that the Act underwent Amendment in the year 2000 by Amending Act No.1/2000 and the amended provisions of the Act have enabled not only fresh grant of leasehold rights but also conversion of leasehold rights into freehold rights as per option of the erstwhile lessees and also stated that necessary application under the amended provisions of the Act was to be made as prescribed in the Rules. Further it is stated that since the petitioner's representation for restoration of lease was pending by the time the Act was promulgated and the same continued to be pending up till Amending Act 1/2000 has come into force, his application is liable to be treated as one which is traceable to the amended provisions of the Act and that for these reasons, his application was kept pending all these years. It may be appropriate to have a look at the order made in W.P.No.7025/90 dt.30-11-93 and the said order reads as hereunder:-

> *"The learned Counsel for the petitioners wants to withdraw the Writ Petition. Accordingly, the Writ Petition is dismissed as withdrawn. No costs."*

It is needless to say that this order may have to read along with the letter dt.16-11-1993 referred to supra. It is also stated that the 2nd respondent had taken possession of the industrial plot of the petitioner pursuant to the termination of the lease order contained in G.O.Ms.No.225 dated 23-3-1990. It is also further stated that in a portion of the said plot, when a construction is being commenced by the Office of the Mandal Revenue Officer, Himayatnagar,

Hyderabad, the petitioner filed W.P.No.4561/2002 that the interference over the industrial plot is arbitrary and that the said Writ Petition was disposed of by a learned Single Judge of this Court on 19-7-2002 with the following direction:-

> *"In view of the above Writ Petition is disposed of directing the petitioner to make fresh application for grant of lease within a period of two weeks from the date of receipt of a copy of this order and on such application the Commissioner while considering the allotment of industrial plots on lease basis, shall consider the case of the petitioner and take appropriate decision in this regard."*

Further it is averred that the petitioner again submitted a representation dated 12-8-2002 duly referring to his earlier representations and prayed for grant of leasehold rights over the industrial plot and that the 2nd respondent, vide letter dt.24-2-2004 addressed to the petitioner, had required the petitioner to apply pursuant to the fresh notification dated 17-2-2004 for grant of freehold rights as per Rule 4(1) of the Amended Act and that again the petitioner had submitted representation dated 17-3-2004 for grant of freehold rights. It is also stated by the petitioner that when all was set for grant of the leasehold/freehold rights in his favour by way of restoration, the 2nd respondent had rejected his claim vide order dated 8-7-2004 on the following grounds:-

a) *Since 1967 onwards, there has been no industrial activity and the lessee failed to utilize the land either for starting any new unit or to revive the closed unit despite many opportunities given by the Government since then.*
b) *The lessee remained as a non-user of the assigned plot since 1967.*
c) *There was no industrial activity and the lessee remained as non-user as on the appointed date 17-2-2000,*

thereby attracting the provision of Section 3(1)(b) of the Act No.1/2000.

It is also stated that the order of the 2nd respondent dated 8-7-2004 is defective since the provisions of the Amended Act could not have been applied to the petitioner since his lease was terminated as early as on 23-3-1990 vide G.O.Ms.No.225 and possession was taken from him and that when the petitioner challenged the said order in this Court, the petitioner was required to withdraw the Writ Petition, which he had done with utmost sincerity and trust that the respondents would restore the industrial plot to him by way of reconsideration/review of the cancellation order dated 23-3-1990 contained in G.O.Ms.No.225. The petitioner also stated that since he was called upon to pay the quit rent as per the letter of the 2nd respondent dt.16-11-1993, on the principle of promissory estoppel and legitimate expectation, the respondents ought to have restored the leasehold rights to him in which event, he would have been a subsisting industrialist as on the date when the Act and the Amended Act have come into force. It is also stated by the petitioner that insofar as the other ground of non-user is concerned, there is any amount of factual record to show that there has been continuous industrial activity over the industrial plot from 1963 when the lease was executed in favour of his father. It is further stated that the very circumstance that permission was granted for change of manufacturing line from manufacture of garments to manufacture of Pharmaceuticals is a clear indication that there has been industrial activity over the said industrial plot. Further it is stated that whether the industrial activity was profitable or whether it was optimum production or not is not a matter of concern to the 2nd

respondent either in terms of the Act or in the general perspective of the rights and obligation of lessor and lessee. The petitioner further stated that the cancellation of lease contained in G.O.Ms.No.225 dt.23-3-1990 itself is illegal and only on account of the said illegal cancellation of lease, he lost possession over the industrial plot. Further it is also stated by the petitioner that all these years, it has been held out to him that he being restored the leasehold rights but at the end of the day, the 2nd respondent had taken a very hyper technical and imaginary ground to reject his claim and that insofar as the non-user of the industrial plot is concerned, there is absolutely no basis for such a finding. It is also stated that whether an industrial enterprise is earning profits or it has become sick, the lessor does not get any right to cancel the lease for such contingency. Further it is stated that insofar as the permission to include partners to change over to the manufacturing line of Pharmaceuticals is concerned, such permission was granted by the 1st respondent and similarly, permission was granted for sub-lease of the industrial plot also and thus, there is absolutely no ground to cancel the lease which related to the year 1967 and hence, the cancellation of lease order contained in G.O.Ms.No.225, dt.23-3-1990 is erroneous and baseless and that but for the said order, the petitioner would have had the same status as that of the other lessees whose leases came to be terminated by operation of law under the provisions of the Act. In this context, the petitioner also stated that he is eligible for restoration of the industrial plot since the 1st respondent had always shown a profile to him that they are going to reconsider the cancellation of lease order contained in G.O.Ms.No.225 dated 23-3-1990 and they have deceitfully made

him to withdraw the Writ Petition filed against the said cancellation of lease order and thus, due to fraud played on him, he had withdrawn the Writ Petition with utmost good faith that the respondents would withdraw the cancellation of lease order dt.23-3-90 and continue his leasehold rights over the industrial plot and thus, by preventing him from prosecuting his legal remedies in W.P.No.7025/90, the present rejection order dt.8-7-2004 is issued by the 2nd respondent. It is also stated that there was no insurmountable condition on the part of respondents 1 and 2 in reconsidering the order contained in G.O.Ms.No.225, dt.23-3-1990 and that without any such reconsideration/review, the 2nd respondent had now come out with the order dt.8-7-2004 rejecting the petitioner's request for leasehold/freehold rights of the industrial plot. It is further stated that as part of the same strategy, the 2nd respondent had allotted the petitioner industrial plot to the 3rd respondent who is not entitled for such an allotment since he is not an industrialist. Further it is stated by the petitioner that the 3rd respondent is a political organization and to accommodate them by allotment of his industrial plot, is totally irrational and beyond any valid reason and if the 3rd respondent is eligible for allotment of his industrial plot, it is absolutely ununderstandable as to how he is disentitled to the same. The petitioner further stated that the 3rd respondent had not complied with any of the provisions of the Act or Amended provisions of the Act and hence rejection of his claim and allotment of his industrial plot to the 3rd respondent is irrational, discriminatory and arbitrary. Assailing the rejection order of the 2nd respondent dated 8-7-2004, the petitioner had filed an appeal before the 1st

respondent under Section 9 of the Act and his appeal was summarily rejected vide Government Memo dated 8-11-2004 and he had filed W.P.No.21410/2004 in this Court challenging the summary rejection of his appeal. Further it is stated that the said Writ Petition was partly allowed on 17-2-2005 setting aside the summary rejection order the 1st respondent and directing the 1st respondent to consider the grounds of appeal on their own merit afresh and pursuant to the said remand order, the 1st respondent had passed the present impugned memo dated 29-10-2005 rejecting his appeal on the same grounds, on which the 2nd respondent had rejected his claim. It is also stated that a perusal of the impugned memo would show that there has been no application of mind by the 1st respondent to the grounds of appeal which were urged by the petitioner in his memorandum of appeal. Further it is stated that since the 1st respondent is a statutory appellate authority, it is enjoined to consider and decide all the grounds that are raised in the memorandum of appeal, however, the impugned memo of the 1st respondent dated 29-10-2005 is a mechanical repetition of the same reasons which are recorded by the 2nd respondent in the order dt.8-7-2004 and thus, the 1st respondent-appellate authority had failed to exercise its appellate jurisdiction in the proper perspective. Further it is stated that since the 1st respondent – appellate authority has recorded the self-same reasons contained in the order of the 2nd respondent dated 8-7-2004, both the orders of the 2nd respondent dated 8-7-2004 and the appellate order of the 1st respondent dated 29-10-2005 are liable to be invalidated for the same reasons which are mentioned above. It is further averred by

the petitioner that he also filed W.P.No.25167/2005 in this Court assailing the order of the 2nd respondent dated 8-7-2004 rejecting his claim for grant of leasehold/freehold rights over the industrial plot bearing No.21/1, Azamabad Industrial Area, Hyderabad and also the appellate orders of the 1st respondent dated 29-10-2005 whereby and whereunder the orders of the Commissioner dated 8-7-2004 were confirmed and he had also sought for a declaration that the action of the 1st respondent in allotting the said plot to the 3rd respondent is arbitrary and irrational. The petitioner had filed the above Writ Petition on 23-11-2005 and the same was admitted by the Hon'ble Court on 25-11-2005 and by a subsequent order dated 3-3-2006, the Writ Petition was directed to be posed for final hearing on 24-4-2006 and that while he had challenged the allotment made in favour of the 3rd respondent in the said Writ Petition, on 23-11-2005 itself, the 4th respondent had executed a sale deed in favour of the 3rd respondent, which is registered as document No.3804/2005 alienating the said plot in favour of the 3rd respondent for a total consideration of Rs.17,19,500/-. Further it is stated that all other industrial plots in Azamabad Industrial Area, Hyderabad were granted fresh lease/fresh hold in favour of the subsisting lessees and no sale deed is executed in respect of any other industrial plots in Azamabad Industrial Area. It is stated that the action of the respondents in executing a sale deed and thereby transferring the title of plot No.21/1 is nothing but an undue favour conferred out of way in favour of the 3rd respondent. It is also stated by the petitioner that when his earlier Writ Petition has come up before the Court on 3-3-2006, it is represented by the Counsel for the 3rd respondent

that it has already taken a sale deed from the 4th respondent and, therefore, the prayer made in W.P.M.P.No.32359/2005 seeking to restrain execution of sale deed has become infructuous. Further it is stated that the market value of land in Azamabad Industrial Area is not less than Rs.15,000/- per sq.yd., and it is obvious that the execution of sale deed in favour of the 3rd respondent for a paltry sum of Rs.500/- per sq.yd., is an undue favour conferred on the 3rd respondent. Even from the point of view of the public interest, it was open to the respondents to conduct a public auction for obtaining substantial revenue, if the plot is said to be sold on outright basis. It is also stated that the recitals of the sale deed indicate that the there was an agreement of sale deed dated 25-2-2005 pursuant to the application of the 3rd respondent dated 29-11-2004 for purchasing the industrial plot for using the same as industrial purpose and the 4th respondent had executed the impugned sale deed in favour of the 3rd respondent for the purpose of setting up an industry for manufacture of Telugu Daily Newspaper and for no other purpose and also stated that there are many Telugu Daily Newspapers and there is absolutely no reason as to why the 3rd respondent should be given any preference or precedence in the matter of sale of industrial plot for housing an industry for manufacture of Telugu Daily Newspaper. It is further stated that the sum and substance of the story is that the respondents are bent upon depriving the petitioner of the industrial plot and since he had already filed W.P.No.25167/2005, relentless efforts are being made to render his claim difficult, if not impossible and execution of the sale deed is one such attempt and, therefore, the action of the respondents in

executing the sale deed in favour of the 3rd is arbitrary, illegal and malafide. It is also stated that the 1st respondent is the owner of the industrial plot and it is ununderstandable as to how the 4th respondent – Corporation has executed the impugned sale deed in favour of the 3rd respondent and that it appears that the 3rd is now taking steps to obtain construction permission from the Municipal Corporation of Hyderabad for construction of a printing press over the said industrial plot. The petitioner also further stated that he had reliance information to assert that the building application of the 3rd respondent is at the final stage of processing in the 5th respondent Corporation and that if the 3rd respondent is permitted to proceed with construction over the said plot on the basis of the impugned sale deed, it would amount to perpetuation of an illegality and it would also amounts to a permanent deprivation of the petitioner's claim for grant of lese/freeholder rights over the said plot, which is subject matter of W.P.No.25167/2005 and thus, either from the point of view of his interest, which is projected in W.P.No.25167/2005 or from the point of view of public interest, the action of the respondents in selling the industrial plot to the 3rd respondent for a song, is arbitrary and contrary to the principles relating to grant of State largesse to the citizen. The petitioner also further stated that it is now well settled that even in contractual matters, the action of the State should be transparent and free from arbitrariness (2004(3) SCC 553).

14. In the counter affidavit filed by 1st and 2nd respondents, it is stated that *Sri Bhagatram Gupta of M/s.SB Ram & Co., was given on lease the plot No.21/1 Azamabad Industrial Area admeasuring*

1.137 acres (5503.08 sq.yards) for a premium of OS Rs.2274/- (IG Rs.1895/-) and on a yearly rent of Rs.24,37 ps. for a period of 99 years commencing from 10-6-1353 Fasli and Lease Deed was executed on 24-3-1967 and that the allotment of the land to the company was made for the purpose of manufacturing Ready Made Dresses and any article or things connected with such manufacture etc. Further it is stated that the lessee had constructed necessary buildings in the factory, installed machinery and started manufacturing Dresses under the name and style of M/s.Ram Dresses till November, 1975 and later the said unit was reportedly closed due to labour problems. It is also stated that M/s.S.B.Ram & Co. have violated the terms of the lease, Government have issued a Notice in Memo. No.638/IF.Cell/84-19, dt.29-7-1987 to show cause as to why the lease should not be cancelled for having committed breach of covenants and contravention of the terms of lease and to this, M/s.S.B.Ram & Co., have given reply on 8-9-1987 & 13-9-1989 and that as the reasons put forth by M/s.S.B.Ram & Co. are not convincing, the Government vide G.O.Ms.No.225, Inds. & Com. (IF.Cell) Department, dt.23-3-1990 terminated the leasehold rights in plot No.21/1 admeasuring 1.137 acres in Industrial Area, Azamabad, Hyderabad and requested the Commissioner of Industrues to resume possession of the said premises and accordingly, the department had resumed possession of land on 11-5-1990. Further it is stated that questioning the above orders, Sri B.Satish Kumar Gupta, S/o.Sri S.Bhagatram Gupta had filed a Writ Petition No.7025/1990 in the High Court and this Court had given an interim direction on 25-5-1990 to the effect that status quo obtaining as on the date of the order with regard to possession of plot No.21/1 shall be maintained pending further orders on the Writ Petition and

the said Writ Petition was subsequently withdrawn by the petitioner. In reply to para 6 it is stated that to curb misuse or unauthorized use of Government land, other irregularities, violations and to prevent non-industrial use and to have uniform terms and conditions of lease, the Government have enacted Azamabad Industrial Area (Termination and Regulation of Leases) Act, 15 of 1992. Further it is stated that the occupant industrialists of Azamabad Industrial Area have filed various Writ Petitions in A.P.High Court and SLPs in Supreme Court against the above Act and that the Hon'ble Supreme Court of India finally suggested to make certain amendments to the Act 1992 and that accordingly, the State Government enacted Amended Act 1 of 2000. Some of the important provisions of the Act are as follows: ***3(1)(a)*** *Notwithstanding anything contained in the Indian Contract Act, 1872, the Transfer of Property Act, 1882, or any other law for the time being in force, and the terms and conditions of any lease entered into or other arrangement made with any person in respect of any demises plot either by the erstwhile Nizam's Government or by the erstwhile Government of Hyderabad or by the Government of Andhra Pradesh prior to the appointed date, all those leases, sub-leases or other arrangements made or entered into through a registered deed or otherwise in respect of all demised plots in Azamabad Industrial Area which after due enquiry attract one or more of the ground for cancellation of lease as specified in clause (b) shall stand terminated on the appointed date and thereupon all such leases, sub-leases or any other arrangement whatsoever made by the person in occupation of the demised plot shall stand annulled and every such demised plot shall vest in the Government free from all encumbrances. (b) Notwithstanding*

anything contained in any other law for the time being in force, the leases of plots or portions shall be cancelled on either all or any of the following grounds namely:- Misusing of land for a purpose other than the purpose for which land was allotted including non-user, or Sub-letting or transferring the plots or portions of plots by entering into disguised partnerships and other unauthorized transfer of interest in the plot; or violation of any terms, conditions or covenant specified in the Lease Deed. (2) Lessees of plots whose leases shall not be cancelled under clause (b) of sub-Section (1) shall be entitled to a grant of fresh lease with effect from the appointed date and renewal thereof from time to time on such terms and conditions as may be prescribed by the Government. (3) The lessees specified in sub-Section (2) may, in lieu of renewal of lease, opt for freehold rights in respect of the demised plots of land by paying a price equivalent to 75% of the market value as specified for the area in Market value Guidelines under Section 47(a) of the Indian Stamps Act, 1899. (4) Upon the termination of the leases or other arrangement in respect of the plot under sub-Section (1) of the rights and liabilities as between the parties to the lease or other arrangement in respect of plot shall case and determine, but any amount due to the Government from the aforesaid person under the lease or other arrangements so terminated shall be recovered as an arrears of land revenue. 4(1) On termination of lease or other arrangements made under clause (a) of sub-Section (1) of Section 3, a person in occupation and running an industry on the appointed date may apply for a fresh lease in the manner prescribed. Further it is stated that the Commissioner of Industries and Competent Authority took possession of the plot in terms of G.O.Ms.No.225 dt.23-3-1990 and handed over the same to respondent No.4 on 29-

11-2004 and that the District Collector, Hyderabad had permitted construction of MRO Office building in plot No.21/1 on the orders of the Special Officer and Competent Authority, Urban Land Ceilings, Hyderabad who has declared a piece of land admeasuring 1719.24 sq.mts., as an excess land and having noticed the construction activity, Sri Satish Kumar Gupta made a representation to this office and the remarks of the General Manager, District Industries Centre, Hyderabad were called for and that the General Manager, DIC, Hyderabad had reported that the Special Officer & Competent Authority, Urban Land Ceilings, Hyderabad took possession of a piece of land admeasuring 1719.24 sq.mts., in plot No.21/1 declaring as surplus land vide his proceedings No.D/1913/76, dt.15-10-1997 and handed over to the Mandal Revenue Officer, Himayatnagar, on 15-12-2000 for construction of their Office building as per the administrative sanction of the District Collector in proceedings No.C3/442/92, dt.18-10-2001 and in this regard, this office also informed the above said facts to the Government vide this office Lr.No.38/1/2001/0025/0025/UP, dated 27-3-2002 to issue suitable instructions to the District Collector to stop further construction of MRO's Office. It is also stated that at this stage the lessee approached this Court and filed W.P.No.4561/2002 and this Court had ordered to maintain status quo. It is further stated that the Commissioner of Industries had filed the counter affidavit stating that the entire land in Azamabad Industrial Area, Hyderabad is under the possession of the Competent Authority i.e., the Commissioner of Industries and it was also stated that in view of the issuance of Act No.15 of 1992 and Act No.1 of 2000 and the notifications thereon, all the leases or any other arrangement made or entered into, stood

terminated and this office is yet to commence the process of calling for the applications for grant of fresh lease/freehold rights under the provisions of the Act. Further it is stated that the Mandal Revenue Officer, Himayatnagar, who is also a respondent in the Writ Petition, filed counter affidavit and this High Court on hearing the arguments of Government Pleaders for Revenue and Industries, made the following order in W.P.M.P.No.1127 of 2002 dt.21-5-2002 ***: "I see no reasons to continue the stay orders and accordingly the same are vacated. Post W.P. immediately after vacation. Construction of MRO's Office is subject to result of WP".*** *Subsequently, the W.P.No.4561/2002 has been disposed of directing the petitioner to make fresh application for grant of lease within a period of two weeks from the date of receipt of a copy of this order and on such application the Commissioner while considering the allotment of industrial plots on lease basis, shall consider the case of the petitioner and take appropriate decision in this regard and that later the construction was also completed and the Office of the Mandal Revenue Officer is functioning in the premises. It is also stated that the Commissioner of Industries and Competent Authority while disposing of the application dt.17-3-2004 of Sri B.Satish Kumar Gupta of M/s.SB Ram and Co., opined as follows:* ***"The representation filed by Sri B.Satish Kumar Gupta of M/s.SB Ram and Co., in the year 1993 along with the application dated 17-3-2004, has been examined. It is an accepted fact that M/s. SB Ram & Co., had violated the lease conditions and lease was cancelled by Government vide G.O.Ms.No.225, dated 23-3-1990. The subsequent representation is only a statement of intention of starting of industrial activity. However, from the past record of assurances given by the petitioner and many***

opportunities given by the Government to the company to start industrial activity, it has become difficult to believe that the petitioner would start any industrial activity. M/s.SB Ram & Co., was not doing any industrial activity on due date and thus they fall within the provisions of Section 3(1)(b) and fit for rejection. The representation of M/s.SB Ram & Co for the reasons given above is rejected". Accordingly, the application of M/s.SB Ram & Co., for grant of freehold rights, has been rejected vide this office Lr.No.13/1/2004/0025/0025/FD, dt.8-7-2004. *Further it is stated that the application of the petitioner for grant of freehold rights has been rejected by the Commissioner of Industries and Competent Authority, strictly in terms of Act No.1 of 2000 vide proceedings No.13/1/2004/0025/0025/FD, dt.8-7-2004. It is also stated that the applicant made an appeal to the Government and Appellate Authority under Section 9 of Azamabad Industrial Area (Termination and Regulation of Leases) Act, 15 of 1992 and that the Government have also rejected his appeal vide Memo No.10678/IF cell/A1/2005, dt.8-11-2004 and directed the Commissioner of Industries to hand over the land to respondent No.4 and that the respondent No.2 after conducting panchanama, has handed over the land in plot No.21/1 admeasuring 3414 sq.yds., on 18-11-2004 to the respondent No.4 and as per the Government orders issue Memo.No.9718/IF Cell/A1/2004, dt.9-11-2004, the respondent No.4 sold the resumed land to the respondent No.3 and handed over the land to them. Aggrieved by the allotment of land to respondent No.3, the petitioner Sri B.Satish Kumar Gupta had filed W.P.No.25167/2005 praying this Court* ***"that the action of the 1st respondent contained in Memo No.14701/IF.Cell/A1/2005 dated***

29-1-2005 and the order of the 2nd respondent contained in Lr.No.13/1/2004/0025/0025/FD dt.8-7-2004 rejecting the claim of the petitioner for grant of leasehold/freehold rights over industrial plot bearing No.21/1 of Azamabad Industrial Area, Hyderabad is arbitrary and illegal and also declare that the cancellation of leasehold rights of the petitioner contained in the order of the 1st respondent in G.O.Ms.No.225 dated 23-3-1990 is arbitrary and illegal and consequently direct the respondents to reconsider the claim of the petitioner for grant of freehold/leasehold rights over the said industrial plot by deeming that the petitioner has been a continuing lessee as on the date when the Azamabad Industrial Area (Termination of Regulation of Leases) Act 1992 and the provisions of the amendments to the said Act by declaring that the allotment of the said industrial plot in favour of the 3rd respondent is arbitrary and irrational and grant such other relief as it deems fit in the circumstances of the cases. This respondent filed a counter along with the document and the said Writ Petition is pending adjudication.

15. Third respondent filed a counter affidavit in detail and it is needless to say that this counter affidavit is verbatim reproduction of the counter affidavit filed in the other connected Writ Petition specified supra. The factual aspects narrated in the counter affidavit of R.3 are almost akin to what had been pleaded in the counter affidavit of R.1 and R.2. The show cause notice had been referred to and it is averred in para 8 that *pursuant to the show cause notice the lease deed dated 24-3-1967 purported to have been grant to the writ petitioner was terminated on 23-3-1990 by the Government vide*

G.O.Ms.No.225, dated 23-3-1990. It is also stated that in consequence of said termination the possession of land granted on lease to the writ petitioner was resumed on 11-5-1990. Challenging the said action of the Government canceling lease and resumption of the land, the writ petitioner filed W.P.No.7025/90 and the said Writ Petition was withdrawn by the writ petitioner on 30-11-1993 without reserving any right to challenge the said termination of lese by said G.O.Ms.No.225 dated 23-3-1990 and the consequential resumption of possession of land on 11-5-1990 and that from the perusal of the said order of this Court dismissing the W.P.No.7025/90, it does not appear that this Court had given any liberty to the writ petitioner to question again the termination of the lease by G.O.Ms.No.225 dated 23-3-90 and the consequential resumption of provisions of land on 11-5-1990 and that the attempts made by the writ petitioner if any subsequent to the dismissal of the W.P.No.7025/90 as withdrawn is only for consideration of his eligibility for applying and obtaining any land under the provisions of the New Enactment namely Azamabad Industrial Area (Termination and Regulation of Lease) Act 1992 (Act 15/1992). It is further stated that the provisions of the Act referred to above purport to termination all earlier leases and prescribes different norm for grant of fresh leases and it is thus obvious that any attempt by the petitioner for applying for fresh leases under provisions of this Act 15 of 1992 does not in any way entitled him to ask for renewal of the lease dated 24-3-67 which was validly terminated after following due process of law by issuing show cause notice etc., as stated herein above and ultimately culminating in the order of this Court dated 30-11-1993 in W.P.No.7025/90 which amounts to upholding of the cancellation of lease by G.O.Ms.No.225 dt.23-3-1990 both by operation of principle of res judicata under

Section 11 and the mandate in sub-rule (3) and (4) of Order XXIII of C.P.C. Further it is averred in para 11 that after resuming the land from the petitioner on 11-5-1990 in consequence of termination of lease the Government delivered 500 sq.yds., of land to the Collector, Hyderabad for enabling them for construction of Office of M.R.O., Himayatnagar and that in respect of the remaining land, the 3rd respondent herein which is leading Telugu Newspaper having all the credentials as narrated in the counter affidavit filed in W.P.No.25167/05 applied to the Government for allotment of the land and the Government in consideration of Public Service rendered by the 3rd respondent conceded to the request of the 3rd respondent vide letter No.9718/IF.CELL/A1/2004, dt.9-11-2004 directed the Vice Chairman and Managing Director APIIC to allot and deliver the possession of the remaining extent of 2,856.75 sq.mts., in plot No.21/1 to the 3rd respondent on payment of Rs.500/- per sq.yds., and that accordingly a formal agreement was also drafted on 25-2-2005 whereunder a sum of Rs.17,19,500/- was demanded and collected by the Government from the 3rd respondent and thereafter a regular sale deed was executed and registered on 23-11-2005. in para 12 of the counter affidavit it is averred that with reference to the statements, averments and contentions of the writ petitioners that while the market value of the land in question is Rs.15,000/- per sq.yd, the 3rd respondent had been given the land at rate of Rs.500/- per sq.yd., amounts to discrimination, it is stated as follows. While the allegation that the market value of the land in question is more than Rs.15,000/- per sq.yd., is not true in regard to which no evidence whatsoever has been produced by the writ petitioner, it may kindly be appreciated

that the allotment of land by the Government for industrial purpose is more in pursuance of the avowed policy of the Government to encourage and improve industrial development in the state and not on the basis of making any commercial profit by the Government. It was in that context that the land leased to the petitioner was resumed by the Government by cancellation of the lease deed inasmuch as the petitioner and his predecessors-in-title have never undertaken any industrial development nor did they establish any industry as promised by them. On the other hand, the Government found that the petitioner and their predecessors-in-title were intending to use the land as a commercial development undertaking and as real estate entrepreneur and also stated that in that context the petitioners have no grievance whatsoever for allotting the land by the Government to the 3rd respondent on the common market value fixed for the industrial entrepreneurs. Further it is stated that in pursuance of the said sale deed and delivery of possession, the 3rd applied to the Municipal Corporation for construction of building for their Press which was accorded by M.C.H., vide permit No.138/40, dated 12-9-2006. This is the stand taken by the 3rd respondent in the counter affidavit.

16. Submissions at length were made in relation to the Order made in W.P.No.1812/2006, W.P.No.21410/2004, W.P.No.4561/2002 as well. Certain submissions were made relating to the Act, the Date of Enforcement of the Act, the applicability of the provisions of the Act referred to supra as well. Section 3 of the Act dealing with ***Termination of Leases*** reads as hereunder:-

(1) Notwithstanding anything contained in the Indian

Contract Act, 1872(Central Act 9 of 1872) the Transfer of Property Act, 1882 (Central Act 4 of 1882) or any other law for the time being in force, and the terms and conditions of any lease entered into or other arrangement made with any person in respect of any demised plot either by the erstwhile Nizam's Govt. or by the erstwhile Govt. of Hyderabad or by the Government of A.P., prior to the appointed date, all leases or other arrangements made or entered into through a registered deed or otherwise in respect of all demised plots in the Azamabad Industrial area, shall stand terminated on the appointed date and thereupon all sub-leases or any other arrangements whatever made by the person in occupation to hold possession of the demised plot shall stand annulled and every such demised plot shall vest in the Government free from all encumbrances and shall be used subsequently for industrial purpose only.

(2) Upon the termination of the lease or other arrangement under sub-Section (1), the rights and liabilities as between the parties to the lease or other arrangement shall cease and determine, but any amount due to the Government from the aforesaid person under the lease or other arrangement so terminated shall be recovered as an arrear of land revenue.

Section 4 of the Act dealing with ***Application for fresh lease*** reads as hereunder:-

(1) On the termination of the lease or other arrangement under sub-Section (1) of Section 3, the person in occupation may at his option apply for a fresh lease in the manner prescribed.

(2) On receipt of an application under sub-Section (1), the Competent Authority may, whether he is satisfied that the applicant is not guilty of violation of any conditions of the lease, grant fresh lease in accordance with such terms and conditions as may be prescribed or refuse to

grant a fresh lease for reasons to be recorded in writing.

Provided that where the person in occupation of the demised plot, the lease of which stands terminated under this Act, was actually using the demised plot for industrial purpose and was not otherwise guilty of violation of any conditions of lease, his application for fresh lease shall not be rejected and he shall be granted a fresh lease on such terms and conditions as may be prescribed.

Explanation:- For the purpose of this Act where a lessee enters into a partnership agreement or other cognate arrangement for carrying on any activity whatsoever on the demised plot then notwithstanding anything in the Indian Partnership Act, 1932 (Central Act 4 of 1932), it shall also be deemed to be violation of the conditions of the lease.

17. As can be seen from the lette**r dt.16-11-1993 though in W.P.No.7025/90 withdrawing the Writ Petition, relating to liberty or otherwise nothing had been specified, this Court may have to arrive at inevitable conclusion that only in the light of the compromise made, the Writ Petition had been withdrawn.** The submissions at length in relation to either *res judicata* or applicability or otherwise of Order XXII Rule 3 of the Code of Civil Procedure need not be gone into in elaboration. Incidentally, certain submissions were made that Section 4 of the Act cannot be invoked since the ingredients of Section 4 are not satisfied. In ***STATE OF ORRISA v MANGALAM TIMBER PRODUCTS LTD.***[1] at para 4 the Apex Court observed as hereunder:-

"Having heard the learned counsel for the parties, we are satisfied that no case is made out for interference with the judgment of the high Court. Before the High Court, the principal plea of the respondent was that there was no contract in writing and therefore the applicability of the principle of promissory estoppel was not established. The High Court has rightly discarded this plea. To attract the

applicability of the principle of estoppel it is not necessary that there must be a contract in writing entered into between the parties. We are not satisfied even prima facie that it was a case of an error committed by the State Government of which it was not aware. The State of Orissa should have, while holding out the representation, taken into consideration the fact - who will have to do re-plantation and that the permission of the Government of India would be needed for the purpose. The State cannot take advantage of its own omission. The State Government having persuaded the respondent to establish an industry and respondent having acted on the solemn promise of the State Government, purchased the raw material at a fixed price and also sold its products by pricing the same taking into consideration the price of raw material fixed by the State Government and supplied, the State Government cannot be permitted to revise the terms for supply of raw material adversely to the interest of the respondent and effective from a back date and place the respondent in a situation which it will not be able to resolve. The respondent could not have revised their price from a back date and recovered it from innumerable consumers to whom their finished products were supplied at a fixed price."

I n ***HIRA TIKKOO v. UNION TERRITORY, CHANDIGARH***[2] the Apex Court observed at para 25 as hereunder:-

"Surely, the doctrine of estoppel cannot be applied against public authorities when their mistaken advice or representation is found to be in breach of a Statute and therefore, against general public interest. The question, however, is whether the parties or individuals, who had suffered because of the mistake and negligence on the part of the statutory public authorities, would have any remedy of redressal for the loss they have suffered. The 'rules of fairness' by which every public authority is bound, requires them to compensate loss occasioned to private parties or citizens who were misled in acting on such mistaken or negligent advice of the public Authority. There are no

allegations and material in these cases to come to a conclusion that the action of the authorities was mala fids. It may be held to be careless or negligent. In some of the English cases, the view taken is that the pubic authorities cannot be absolved of their liability to provide adequate monetary compensation to the parties who are adversely affected by their erroneous decisions and actions. But in these cases, any directions to the public authorities to pay monetary compensation or damages would also indirectly harm general public interest. The public authorities are entrusted with public fund raised from public money. The funds are in trust with them for utilisation in public interest and strictly for the purposes of the Statute under which they are created with specific statutory duties imposed on them. In such a situation when a party or citizen has relied, to his detriment, on an erroneous representation made by public authorities and suffered loss and where doctrine of 'estoppel' will not be invoked to his aid, directing administrative redressal would be a more appropriate remedy than payment of monetary compensation for the loss caused by non-delivery of the possession of the plots and consequent delay caused in setting up industries by the allottees."

18. As can be seen from the material available on record, this appears to be a long run litigation and the petitioner had been agitating for his rights for sufficiently a long time and he has been approaching the Courts and knocking at the doors of the Courts repeatedly. It may also be relevant to have a glance at the order made in Writ Petition W.P.No.4561/2002 dated 19-7-2002:-

"The brief facts of the case are that the father of the petitioner was grated lease of the land in Azamabad Industrial area for a period of 99 years in respect of Ac.1.137 by the Industries Department. However, the Government of Andhra Pradesh issued G.O.Ms.No.225, Industries and Commerce (IF-Cell) Department dated 23-3-1990 cancelling the lease granted on 24-3-1987. Against

the same, the petitioner filed Writ Petition No.7025 of 1990, but in the meanwhile the Government enacted the Act called Azamabd Industrial Area (Termination & Regulation of Leases) Act by which all the leases in respect of Industrial area situated under Azamabad area stand cancelled. Consequently, the petitioner was asked to withdraw the Writ Petition so as to consider his case for allotment of fresh lease under the Act. Thereafter, the petitioner had withdrawn the Writ Petition filed by him and he made a representation to the authorities for the grant of fresh lease but so far no action has been taken and therefore, the petitioner seeks appropriate directions. The petitioner also brings to the notice of this Court the communication sent by the General Manager, District Industries Center to the Commissioner of Industries in Lr.No.7761/1AA/B2/2002 dated 15-3-2002, wherein he has recommended for grant of lease of the land to the petitioner.

The learned Government Pleader for Industries submits that only small extent of land was allotted to Mandal Revenue Officer where the construction is being undertaken but however, for the purpose of allotment of fresh leases a notification has to be issued by the Commissioner of Industries and that exercise is yet to be taken. He also submits that as and when allotment takes place, the case of the petitioner also be taken into consideration keeping in view the earlier lease granted to his father.

In view of the above, the Writ Petition is disposed of directing the petitioner to make fresh application for grant of lease within a period of two weeks from the date of receipt of a copy of this order and on such application the Commissioner while considering the allotment of industrial plots on lease basis, shall consider the case of the petitioner and take appropriate decision in this regard. No costs."

19. The 3rd respondent came into picture at a later point of time.

As against the dismissal of the statutory appeal preferred by the petitioner under Section 9 of the Act, in W.P.No.21410/2004 this Court observed:-

> *"As rightly contended by the learned Counsel for petitioner, the impugned order is a non-speaking order as it merely reproduced Section 3 (1)(b) of the Act for dismissing the appeal without considering any of the contentions raised by the petitioner in the grounds of appeal. For that reason alone, the order is liable to be set aside.*
>
> *Therefore, the impugned order is set aside and the matter is remitted to the appellate authority for consideration of the appeal of the petitioner afresh in accordance with law, after giving notice to the parties concerned by registered post with acknowledgement due. The appellate authority shall dispose of appeal as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this order by the appellate authority. The interim stay granted earlier stands vacated.*
>
> *The Writ Petition is disposed of accordingly. No costs."*

20. As can be seen from the correspondence and also the different proceedings, inconsistent stands had been taken by the Government relating to the grounds of non-user also at one stage stating that from 1967 onwards it was not put into use and another stand that up to 1975 the same was put into use and the specific stand taken by the petitioner is that even up to 1988 the same was put into use and in what circumstances the alleged sub-letting also had been well explained. The petitioner's father Bhagatram Gupta obtained Industrial plot bearing No.21/1 measuring 1.137 acres for lease on condition of establishing an industry_____

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_____on 24-3-1967. It is

the stand of the respondents that the said Bhagathram Gupta had not complied with the terms and conditions and postponed the establishment of the industry and hence show cause notices were issued for cancellation. G.O.Ms.No.225 dt.23-3-1990 already had been referred to supra. The withdrawal of W.P.No.7025/90 already had been specified above and how the Act came into force and how the petitioner has been agitating for his rights had been well explained. The self-same petitioner filed W.P.No.1812/2006 as against Municipal Corporation of Hyderabad and also the 3rd respondent herein, praying for a Writ of Mandamus directing the 1st respondent to act in accordance with law and take action forthwith as against the unauthorized construction activity of the 2nd respondent over industrial plot in question. The said order reads as hereunder:-

> *"The petitioner's father was allotted an extent of Acs.1.137 of industrial plot bearing No.21/1 situated at Azamabd Industrial Area, Hyderabad. The allotment was by way of a lease for 99 years and the lessee was required to set up a manufacturing unit. In 1990 the Government of Andhra Pradesh terminated the lease vide their orders in G.O.Ms.No.225 dated 23-3-1990. Assailing the same, the petitioner filed W.P.No.7025/1990, and subsequently, the same was withdrawn on 30-1-1994, as the petitioner wanted to pursue the matter with the Government. Ultimately, in 2005, the Government of Andhra Pradesh rejected the request of the petitioner for re-allotment of the land, assailing which the petitioner filed W.P.No.25167 of 2005. Though the Writ Petition was admitted, this Court did not pass any interim orders in favour of the petitioner. It appears, subsequently, the Government sold the self-same land to the second respondent under registered sale deed. Be that as it is, the petitioner alleges that the second respondent without obtaining any permission from the first*

respondent took up excavation for raising columns. Therefore, he seeks a Writ of Mandamus directing the first respondent to take necessary action against the second respondent, who is allegedly making unauthorized construction on plot No.21/1 at Azamabad.

The matter was initially listed yesterday. The learned Standing Counsel and the learned Counsel for the second respondent, Sri V.Raghu, took time till today to get instructions in the matter. Today, when the case is called, the learned Senior Counsel for the second respondent, Mr.K.Pratap Reddy, on instructions, submits that the second respondent purchased the property under registered sale deed dated 23-11-2005 and that it is planning to set up a Printing Press after obtaining necessary permission from the Municipal Corporation of Hyderabad. He further submits that the second respondent has not taken up any construction, and excavation is made for the purpose of soil testing. The same is recorded.

The Writ Petition is accordingly disposed of. No costs."

21. In the light of the facts and circumstances and also the respective stands taken by the parties and the prior orders made in different Writ Petitions, no doubt, allotment of a small piece of land was made for construction of Mandal Revenue Officer's Office and some portion of the subject matter had been allotted to the 3rd respondent. It is stated that the same is due to political reasons but no acceptable material as such had been placed before this Court. The construction activity in fact had been challenged in W.P.No.1812/2006 and the same was disposed of. In the light of the peculiar facts and circumstances, both in law and also on the ground of equity, this Court is of the considered opinion that the Government is not justified in totally ignoring the stand taken by the writ petitioner especially in the light of the assurance made at a particular point of time, in pursuance of which the Writ Petition had

been withdrawn and also as can be seen from the subsequent events, the series of Writ Petitions and the orders made there-under, equally, in the light of the provisions of the Act and also the specific stand taken by R.3, it cannot be just and proper to disturb the allotments already made in the peculiar facts and circumstances especially keeping in view the fact that possession had been taken long back and the delivery also was made sufficiently a long time ago and much water had flown thereafter. Though this Court is inclined to confirm the allotments already made, since it is brought to the notice of this Court that further sufficient extent of land is left-over in the subject matter of the Writ Petition, let the Government consider the case of the petitioner in the light of the facts and circumstances and take appropriate decision in accordance with law. In the peculiar facts of the case, let the petitioner make a representation in detail, within a period of two weeks from the date of receipt of a copy of this order, narrating all the facts and circumstances to the competent Authority – Government, and let the Government take a decision in this regard within a period of six weeks thereafter as specified supra.

22. With the above directions, the Writ Petitions are disposed of. No order as to costs.

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Justice P.S.Narayana

November, 2007

Note: L.R. Copy to be marked (Yes/ No)

smr

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[1] AIR 2004 S.C., 297

[2] AIR 2004 S.C., 3648